Detroit Medical Center Corporation *and* Michigan Council 25, American Federation of State, County and Municipal Employees, AFL–CIO and Local 79, Service Employees International Union, AFL–CIO, Joint Petitioner and Hospital Workers Organizing Committee. Case 7–RC–21639

July 27, 2000

DECISION AND CERTIFICATION OF RESULTS OF ELECTION

BY CHAIRMAN TRUESDALE AND MEMBER FOX AND HURTGEN

The National Labor Relations Board, by a three-member panel, has considered objections to an election held October 1, 1999,[1] and the attached relevant portions of the hearing officer's report (as an Appendix) recommending disposition of them. The election was conducted pursuant to a Stipulated Election Agreement. The tally of ballots shows 186 for the Joint Petitioner, 114 for the Intervenor and 732 against the participating labor organizations, with 179 challenged ballots, an insufficient number to affect the results.

The Board has reviewed the record in light of the exceptions and brief and has decided to affirm the hearing officer's findings and conclusions only to the extent consistent with this decision.[2]

The Intervenor's Objection 1 alleges that the Employer interfered with employees' free choice by granting the Joint Petitioner's request for access to conduct campaign meetings on company premises during worktime while not offering the same access to the Intervenor. The hearing officer sustained the objection. In its exceptions, the Employer contends that, unlike the Joint Petitioner, the Intervenor never requested access to the Employer's premises and that, in the absence of such a request, there was no objectionable denial of access. We find merit in the exceptions.

The parties entered into a Stipulated Election Agreement on September 1. On September 9, the Joint Petitioner requested a meeting with the Employer. The Intervenor was not invited and did not attend. At the meeting, the Joint Petitioner requested access to the Employer's premises. The Employer agreed to allow access subject to nonnegotiable rules established solely by the Employer. On September 22, the Employer faxed the Joint Petitioner two agreements memorializing the rules for access: "Informal Meeting Agreement" and "Informal Meeting Agreement: Outdoor Events." The Employer determined the number of meetings and the dates but asked the Joint Petitioner for suggested times. The names of both the Joint Petitioner and the Intervenor appeared at the top of the agreements; however, only the box next to the Joint Petitioner's name was checked off. The Employer told the Joint Petitioner that if the Intervenor requested access, the same arrangements would be provided. The Joint Petitioner signed the agreement on September 23, and scheduled meetings indoors on the premises for September 27, 28, and 29, and outdoors on the premises for September 30.

On September 24 or 25, one of the Intervenor's organizers saw a flyer listing the Joint Petitioner's meetings. The flyer stated that "on duty employees may attend meetings, not to exceed one hour with permission of their supervisor." The Intervenor filed an unfair labor practice charge[3] on September 27 alleging that the Employer provided unlawful assistance to the Joint Petitioner by providing rooms for public meetings on hospital premises and by allowing employees paid time off to attend these meetings. The Employer's human resources director contacted the Intervenor on September 28 to offer access on the same terms set forth in the agreements between the Employer and Joint Petitioner. The Intervenor declined, stating that off site meetings had already been scheduled and it was too late to publicize new meetings. During the campaign, the Employer did not conduct a campaign of its own for, or against, any union.

In sustaining the Intervenor's Objection 1**,** the hearing officer concluded that the conduct of the Employer in allowing the Joint Petitioner to conduct meetings on its premises while not timely offering the same arrangement to the Intervenor was objectionable. The hearing officer thus found that the Employer had an obligation to seek out the Intervenor and timely offer the same arrangement regarding access that it granted the Joint Petitioner. Contrary to the hearing officer, we find that the Employer had no such obligation here.

It is not uncommon for the labor organizations which are party to an election to make requests of the employer and these requests may vary. However, the employer has no obligation to notify the party with competing interests that it has either granted or denied such request. In the instant case, the Joint Petitioner requested access, and the Intervenor did not. The Employer simply considered the only access request made to it and did not affirmatively seek out the Intervenor to make the same offer to it. We find that the Employer was not obligated to offer the Intervenor something it had not requested.[4]

The cases cited by the hearing officer are distinguishable. In *Price Crusher Food Warehouse*, 249 NLRB 433

[1] Hereinafter, all dates are in 1999 unless otherwise specified.

[2] In the absence of exceptions, we adopt, pro forma, the hearing officer's overruling of the Intervenor's Objections 4 and 6.

[3] The charge in Case 7–CA–42047 was withdrawn after the election. The allegations of Objection 1 parallel the withdrawn charge.

[4] There is no contention that the Employer would not have granted a similar request for access from the Intervenor. Indeed, to the contrary, the access agreements prepared by the Employer included the names of both the Intervenor and the Joint Petitioner. Further, the Employer told the Joint Petitioner that, if the Intervenor requested access, the same arrangements would apply and the Employer subsequently offered access to the Intervenor on the same basis as the Joint Petitioner.

(1964); *General Iron Corp.*, 224 NLRB 1180 (1980); and *Kosher Plaza Supermarket*, 313 NLRB 74 (1993), in the context of other unfair labor practices, each employer granted access to one union while affirmatively denying the other union's request for similar access. In the instant case, as noted above, there has been no affirmative denial of access because the Intervenor made no request. The hearing officer relied on *Lake City Foundry Co.*, 173 NLRB 1081 (1968), enf. denied 432 F.2d 1162 (7th Cir. 1972), to find that allowing one of two competing unions to conduct organizing meetings on company premises during company time is objectionable conduct where the second union did not request access. However, as acknowledged by the hearing officer, there are "important distinctions" between *Lake Foundry* and the instant case. In *Lake Foundry*, the employer not only committed numerous unfair labor practices and engaged in other objectionable conduct, but also assisted in the formation of the competing labor organization by suggesting to employees that they form their "own union," naming the likely organizers, granting those organizers permission to hold meetings on company premises and on company time, and signing a collective-bargaining agreement with that labor organization when it did not represent an uncoerced majority of its employees.

Finally, the hearing officer recommended sustaining Objections 2, 3, and 5 as related to or providing additional support for his findings with regard to Objection 1. We agree with the hearing officer that the conduct alleged in Objections 2 and 3 would be isolated and de minimis if considered as separate objections. We also agree with the hearing officer that, standing alone, the conduct alleged in Objection 5 would not have a reasonable tendency to influence the outcome of the election. Nor do we find that Objections 2, 3, and 5, viewed cumulatively, warrant setting aside the election. Accordingly, in view of our finding that the Employer's failure to affirmatively offer the Intervenor the same access arrangement as the Joint Petitioner was not objectionable, we find that the Intervenor's remaining objections do not provide a sufficient basis for setting aside the election.

CERTIFICATION OF RESULTS OF ELECTION

IT IS CERTIFIED that a majority of the valid ballots have not been cast for Michigan Council 25, American Federation of State, County and Municipal Employees, AFL–CIO, and Local 79, Service Employees International Union, AFL–CIO or Hospital Workers Organizing Committee, and that neither is the exclusive representative of these bargaining unit employees.

APPENDIX

HEARING OFFICER'S REPORT AND RECOMMENDATIONS ON OBJECTIONS TO CONDUCT AFFECTING THE RESULTS OF THE ELECTION

Objection No. 1—Providing Assistance to the Joint Petitioner by Allowing Joint Petitioner to Meet With Employees on the Employer's Premises During Worktime

Testimony

Donna Stern, a unit clerk employed at Harper Hospital, testified on behalf of the Intervenor and James Shepard, director of human resources for the Central Campus, testified on behalf of the Employer with respect to this objection. As much of testimony was uncontradicted, a summarized synthesis of the uncontroverted testimony follows:

Shortly after the parties entered into the Stipulated Election Agreement on September 1, the Joint Petitioner[2] called Shepard and requested a meeting. That meeting was held on September 9. The Intervenor was not invited and did not attend. At the beginning of the meeting, the Joint Petitioner requested that the Employer conduct a card check and grant voluntary recognition. The Employer refused. The Joint Petitioner then requested access to the Employer's premises. Shepard replied that access would be granted, but that the Joint Petitioner would have to comply with rules drafted by the Employer, and there would have to be a written agreement.[3] Shepard drafted two agreements, incorporating the rules, entitled "Informational Meeting Agreement" and "Informational Meeting Agreement: Outdoor Event."[4] The documents were faxed to the Joint Petitioner on September 22. The Employer determined the number of meetings and the dates on which they could be held, and asked the Joint Petitioner for suggested times. Pursuant to the terms of the agreements, there was a room charge of $150 for each indoor meeting, and the Employer agreed to pay on duty employees up to one hour for attending an indoor meeting. Additionally, the Joint Petitioner was required to identify the nonemployee organizers who would be coming on site for the meetings. The Joint Petitioner signed and returned the documents to the Employer on September 23.

On either September 24 or 25, Stern was handed a flyer[5] announcing on site meetings on September 27, 28, and 29, to be conducted by the Joint Petitioner. The flyer stated, "*ON DUTY* employees may attend meetings, not to exceed one hour with permission of their supervisor." (Emphasis in the original.) She delivered the flyer to the Intervenor's attorney, George B. Washington, on September 25.

On September 27, the Intervenor filed an unfair labor practice charge[6] against the Employer alleging that the Employer

[2] The Employer and Joint Petitioner are signatories to a joint operating agreement covering the Employer's service employees and some skilled trades employees. The Employer has had a decades long collective bargaining relationship with both SEIU and AFSCME. Currently, the Intervenor does not represent any employees of the Employer.

[3] Accordingly to Shepard, the rules were to be established solely by the Employer and were nonnegotiable.

[4] Intervenor Exhs. 2 and 3, respectively. Copies are attached hereto as Exhs. B and C, respectively.

[5] Intervenor Exh. 1, entitled "Countdown to Victory!"

[6] Case 7–CA–42047 (Intervenor Exh. 5) which charge was withdrawn after the election. The allegations of Objection 1 parallel the charge allegations.

was providing unlawful assistance to the Joint Petitioner by providing rooms for meetings and allowing employees to attend the meetings on paid time. At about 3:30 p.m. the following day, after receipt of the charge, Shepard called Washington and asked if the Intervenor wanted to take advantage of the agreements the Employer had with the Joint Petitioner. Washington requested copies of the agreements and they were faxed to him. This was the Employer's first contact with the Intervenor concerning meetings or access to the Employer's premises. The Intervenor did not accept the offer, assertedly because it came too late to publicize the meetings and arrangements had already been made for off premises meetings.

Shepard further testified that the Employer paid on duty employees up to 1 hour's pay for attending an indoor meeting and that it is not atypical for the Employer to pay employees for attending meetings held during business hours. He added, "[I]t was in our best interest, as part of election strategy[,] to have the people go in and attend the meetings and get a full view of the information that was presented, because we did not think we could be harmed by that."[7] Additionally, he stated that each of the agreements had the Intervenor's acronym at the top with a checkbox in the event that the Intervenor wanted to enter into the agreements. The Employer advised the Joint Petitioner that if the Intervenor requested on premises meetings, the same agreements would be made available to the Intervenor.

Analysis and Recommendation

Unfortunately, most of the case law involving an employer's assistance to a labor organization during an election campaign involves unfair labor practices or unfair labor practices and objections, rather than just objections. As a preliminary matter, this objection concerns alleged assistance to a labor organization, but does not raise directly 8(a)(2) issues of domination or interference in the formation or administration of a union. Accordingly, I find that the objection is properly before me and does not involve the type of unfair labor practice conduct that cannot be litigated in a representation case hearing. See, e.g., *Texas Meat Packers*, 130 NLRB 279 (1961).

Generally, objectionable conduct is defined as those actions which create an atmosphere which tends to interfere with the exercise by employees of their free choice in an election. *General Shoe Corp.,* 77 NLRB 124 (1948); *Cambridge Tool & Mfg. Co.*, 316 NLRB 716 (1995); and *Hopkins Nursing Care Center,* 309 NLRB 958, 959 (1992). Conduct which violates Section 8(a)(1) of the Act is a fortiori, conduct which interferes with employees' exercise of free choice in an election. *Enola Super Thrift*, 233 NLRB 409 (1977); *Vencor Hospital-Los Angeles*, 324 NLRB 234, 253 (1997); and *Eskaton Sunrise Community*, 279 NLRB 68, 80 (1986). A limited exception exists for violations which are such that it would be virtually impossible to conclude that they could have affected the results of the election. *Enola*, supra. The standard for finding conduct objectionable is less stringent than that for finding conduct an unfair labor practice. Regardless of whether the conduct at issue is alleged as an unfair labor practice or an objection, essentially the same test is utilized for considering whether that conduct is isolated or de minimus. Factors to be considered, other than the severity of the misconduct, include the number of incidents of misconduct, the extent of dissemination and the size of the bargaining unit. *Enola,* supra. Other considerations in an objection context, are the closeness of the election,[8] proximity of the conduct to the election date,[9] number of unit employees affected, misconduct of the other party(ies), and degree of a party's responsibility for the misconduct. *Phillips Chrysler Plymouth*, 304 NLRB 16 (1991).

Under circumstances where a question concerning representation exists, granting one union access to company property to conduct organizing activities during worktime, while denying such access to another union, has been found by the Board to be an unfair labor practice. *Kosher Plaza Supermarket,* 313 NLRB 74, 85 (1993); *Price Crusher Food Warehouse*, 249 NLRB 433, 439 (1964); and *General Iron Corp.*, 224 NLRB 1180, 1184 (1976). Similarly, the Board held that allowing one of two competing unions to conduct organizing meetings on company premises during company time, where the second union did not request access, was an unfair labor practice and objectionable conduct. *Lake City Foundry Co.*, 173 NLRB 1081, 1089 (1968). The Seventh Circuit Court of Appeals refused to enforce the Board's order on this aspect of the case because meetings on company property were not uncommon and the second union did not request to meet with employees on company property.[10] I am, however, bound by Board law.

Although the instant case resembles *Lake City Foundry*, supra, there are some important distinctions. In *Lake City Foundry*, the employer engaged in numerous other acts of misconduct, including interrogating and threatening employees, assisting in the formation of a labor organization, and signing a collective-bargaining agreement with a labor organization when it did not represent an uncoerced majority of its employees. Additionally, the Employer in the instant case offered to allow the Intervenor access to its premises on the same basis as access was granted to the Joint Petitioner.

In the case before me, the Employer allowed the Joint Petitioner to conduct 11 indoor meetings on its premises, granting employees up to an hour of paid time to attend one of the meetings.[11] It also allowed the Joint Petitioner to conduct three outdoor meeting on its premises which employees attended on their own time. The indoor meetings were conducted 2 to 4 days before the election; the outdoor meetings were conducted the day before the election. Clearly, the conduct was not isolated as the opportunity to attend an indoor meeting on company time and an outdoor meeting on their own time was made available to all employees and the meetings were well publicized.

The ability of one of two unions to address unit employees on company time during the week of an election is a significant advantage. Although the Employer offered on September 28, at 3:30 p.m., to allow the Intervenor to have access to its premises on the same basis as access was extended to the Joint Petitioner, I agree with the Intervenor that the offer came too late to be effective. By the time the offer was extended, seven of the

[7] Tr. 82.

[8] Compare, *Archer Services*, 298 NLRB 312, 313 (1990); *General Felt Industries*, 269 NLRB 474 fn. 1 (1984), with *Cambridge*, supra; and *Hopkins Nursing Care*, supra at 958.

[9] Compare *Waste Automation & Waste Management*, 314 NLRB 376 (1994); *Hopkins Nursing Care*, supra at 959, with *Recycle America*, 310 NLRB 629 (1993); and *Metz Metallurgical Corp*., 270 NLRB 889 (1984).

[10] 432 F.2d 1162 (7th Cir. 1970).

[11] Although Shepard testified that it was not unusual for employees to attend meetings on paid time, no evidence of nonwork related meetings was presented.

indoor meetings had either been concluded or were underway. Assuming a 24-hour period to publicize the meetings, all 11 of the Joint Petitioner's indoor meetings would have been concluded or underway before the Intervenor began its meetings. Not only did these meetings allow the Joint Petitioner the opportunity to deliver its message on company time and premises, they also conveyed the impression that the Employer, by allowing the meetings and paying employees to attend, favored the Joint Petitioner.[12]

I am cognizant of the fact that an overwhelming majority of employees voted against representation by either labor organization. Excluding challenged ballots, the Intervenor received only 11 percent of the ballots cast; the Joint Petitioner received 18 percent. Clearly, the ability to conduct its meetings on the Employer's premises, including during company time, did not result in the Joint Petitioner's election victory.

On balance, I find that the conduct of the Employer in allowing the Joint Petitioner to conduct meetings on its premises during company time and on employees' own time, while not timely offering the same arrangement to the Intervenor, was neither isolated, nor de minimus, and created an atmosphere which tended to interfere with the exercise of its employees' free choice during the election. Accordingly, I recommend that Objection 1 be sustained.

Objection 2—Disparately Posting Announcements of Joint Petitioner's Meetings on Management Bulletin Boards

Testimony

Anya Wislocki, a housekeeping aide at Harper Hospital, testified for the Intervenor with respect to this objection. She testified that prior to the election she saw copies of a flyer distributed by the Joint Petitioner entitled "Countdown to Victory"[13] posted in locker rooms and lying on tables in the cafeteria and breakrooms. The flyers contained a schedule listing the date, time, hospital, and location of various meetings for technical employees. She did not observe any effort on the part of the Employer to remove those notices.

Wislocki further testified that copies of a notice entitled "Union Election Informational Meeting Schedule" (Intervenor Exh. 4)[14] were posted on locked management bulletin boards at Harper Hospital[15] and Hutzel Hospital. Unlike the Joint Petitioner's flyer, this notice did not identify the Joint Petitioner as its source. According to Wislocki, the Employer never offered to post notices for the Intervenor. She acknowledged that she did not request, and is unaware of anyone from Intervenor requesting, that the Employer post the Intervenor's literature.

Shepard testified on behalf of the Employer that the human resources department prepared Intervenor's Exhibit 4 and distributed the document to department supervisors so that the supervisors would be aware of the meeting times and so that they could make accommodations to permit employees to attend. The human resources department did not direct the supervisors to post or not to post the document.

Analysis and Recommendation

There being no evidence that the Intervenor ever attempted to post its literature in locker rooms or leave literature on tables in cafeterias or break rooms, I find no disparate treatment and no objectionable conduct in the Employer's failure to remove literature posted or left on tables by the Joint Petitioner.

The posting on locked management bulletin boards of Intervenor, Exhibit 4, however, is a different matter. I have found that allowing the Joint Petitioner to conduct meetings on the Employer's premises during worktime interfered with employees' freedom of choice in the election. Posting Employer-prepared notices of such meetings on locked management bulletin boards is an extension of the objectionable conduct[16] and further served to suggest to employees that the Employer favored the Joint Petitioner.

Because of its relationship to Objection 1, I recommend that the aspect of Objection 2 pertaining to the posting by the Employer of Intervenor, Exhibit 4 on locked management bulletin boards be sustained.

Objection 3—Disparately Prohibiting Intervenor's Nonemployee Organizers From Distributing Literature in Nonwork Areas

Testimony

The Intervenor called Heather Bergman to the stand to testify in support of this objection.

Bergman worked for the Employer in 1993, but was not employed by the Employer during the critical period. She was, however, a nonemployee organizer for the Intervenor during the election campaign. She testified that she learned of an informational meeting to be conducted at Receiving Hospital on September 27 by the Joint Petitioner. She arrived at Receiving Hospital shortly before the 6 a.m. start of the meeting for the purpose of distributing the Intervenor's literature to employees attending the informational meeting. She was stopped by security and asked to identify herself. She did and asked where the meeting was to be held. A security officer asked her if she was with an organization. She replied that she was and identified the Intervenor. She was allowed to enter, and proceeded to the meeting room. Only two people and security officers were present. As she was waiting for more people to arrive before distributing the literature, security officers told her she would have to leave the property until the meeting was over. She did leave. She additionally testified that before leaving, she observed the Joint Petitioner's literature on a table in the meeting room.

On cross-examination by Joint Petitioner, Bergman did not recall seeing Kevin Bramlet, administrative director in charge of organizing for AFSCME Council 25, at the meeting.

Kevin Bramlet was called to the stand to testify on behalf of the Employer regarding this objection. According to Bramlet, he arrived at Receiving Hospital at 5:30 a.m. for the meeting. He was accompanied by two Local 79, SEIU representatives. He denied seeing Bergman at the meeting, or outside the meeting room. He stated that he stood at the back of the room facing the entrance and would have seen Bergman had she been present.

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[12] The Employer's counsel stated in his closing argument that the Employer did not tell employees to vote for either labor organization, and did not ask employees to vote for "no union." Tr. 138.

[13] Intervenor Exh. 1.

[14] A copy is attached hereto as Exh. D.

[15] Intervenor Exhs. 6a and b are photographs of the posting at Harper Hospital.

[16] *Lake City Foundry*, supra at 1089.

Analysis and Recommendation

To the extent that a credibility determination is required, I credit Bergman's testimony that she was present at Receiving Hospital prior to 6 a.m. on September 27, even if Bramlet did not see her, and that she was ordered to leave by security officers. No evidence was presented to establish that the Employer's directive to Bergman that she vacate the premises was made known to eligible voters prior to the election.

As a separate objection, I would find the Employer's action in asking a nonemployee organizer, on one occasion, to leave its premises while attempting to distribute literature in a nonpatient care, but nonpublic area, before regular business hours, to be isolated and de minimus. Joint Petitioner, however, in conformance with the written agreements I have found to be objectionable in Objection 1, was allowed to remain and distribute its literature. This disparity provides additional evidence of the preference conveyed to the Joint Petitioner and lends additional support to my finding with respect to Objection 1.

I recommend that Objection 3 be sustained.

Objection 5–Providing Payment to Employees to Come in to Vote

Testimony

The Intervenor presented two witnesses, Shanta Driver and Donna Stern, in support of this objection.

Driver testified that she served as the election observer for the Intervenor at the Harper Hospital cafeteria polling place. The Employer's observer during the first polling session was a technical employee from the noninvasive department at Children's Hospital. During the session, two voters asked the Employer's observer if she would sign them in so that they would receive pay for coming in to vote. The observer stated that she would "sign in" the two voters. The Employer's observer explained to Driver that the voters would receive an hour's pay simply for coming in to vote. Driver additionally testified that as the Intervenor's observer, she had no authority to pay off duty employees for coming in to vote.

Stern testified that as a unit clerk, she does scheduling for her group. She reviewed the Employer's payroll records and work schedule for the noninvasive department for Children's Hospital for the 2-week payroll period encompassing the date of the election. Of the eight or nine employees in that department who were not scheduled to work on the day of the election, six received pay for 1 hour on the date of the election. Other than on election day, there were no instances during the 2-week period of employees being scheduled for 1 hour. Stern has not scheduled employees in her group for 1 hour for in service meetings and has no knowledge of other departments doing so. She acknowledged, however, that she does not do payroll and that other departments or units may operate differently than hers.

The Employer's counsel conceded that six off duty employees from the noninvasive department of Children's Hospital received pay for 1 hour for coming in to vote in the election. He denied, however, that receipt of the hour's pay was conditioned in any manner to how the employees voted. The Intervenor's counsel acknowledged that he had no evidence that the payment was dependent on the employee voting for the Joint Petitioner or for "no union."

Analysis and Recommendation

In *Sunrise Rehabilitation Hospital*, 320 NLRB 212 (1995), the Board held that generally "monetary payments that are offered to employees as a reward for coming to a Board election and that exceed reimbursement for actual transportation expenses amount to a benefit that reasonably tends to influence the election outcome."[17] An objective standard is utilized—"whether the challenged conduct has a reasonable tendency to influence the election outcome."[18] Factors to be considered include the size of the benefit in relation to its stated legitimate purpose, the number of employees receiving the benefit, and how employees would reasonably construe the purpose of the benefit given the context and timing of the offer.[19]

In the instant matter, eight or nine employees in one department of one hospital were offered the benefit of an hour's pay for coming in during off duty hours to vote. Six employees took advantage of the offer. The record does not establish the number of employees in the department. Assuming that nine employees were not scheduled during the hours of the election, and assuming an equal distribution of available work hours, the number of employees in the department would range from 45 to 63 depending on whether the department was on a 5-, 6-, or 7-day schedule. There is no record evidence that the offer was disseminated to employees in other departments. Neither is there evidence that the offer was linked to transportation costs. The reason for the offer also is not set forth in the record, but presumably it was to encourage off duty employees to vote.

Standing alone, the offer of an hour's pay to nine off duty employees for coming to vote in a Board election, where 63 employees out of total voting complement of 2000 are aware of the offer, does not, in my opinion, have a reasonable tendency to influence the outcome of the election. The offer, however, does not stand alone. As set forth above, I recommend that Objections 1, 2, and 3 be sustained on the basis that the disparate assistance given by the Employer to one of two participating unions. Under the circumstances, employees could logically assume the offered benefit was for the purpose of voting for the favored union or "no union."

Accordingly, I find that Objection 5 provides an additional, independent basis for setting aside the election. I recommend that Objection 5 be sustained.

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[17] See also *Lutheran Welfare Services*, 321 NLRB 915 (1996); *Perdue Farms*, 320 NLRB 805 (1996).

[18] *Gulf States Canners*, 242 NLRB 1326 (1979), quoted in *Sunrise Rehabilitation Hospital*, supra.

[19] *NLRB v. Exchange Parts Co*., 375 U.S. 405, 409 (1964), and *B & D Plastics*, 302 NLRB 245 (1991), quoted in *Sunrise Rehabilitation Hospital*, supra.